

1 going to cover one dollar issue, and then we
2 can bring everybody back, if that works. Is
3 that agreeable?

4 JUDGE SIPPEL: That's fine.

5 MR. CARROLL: Your Honor, may I
6 approach? I have an exhibit to show the
7 witness.

8 JUDGE SIPPEL: Yes, you may.

9 MR. CARROLL: Thank you.

10 CROSS EXAMINATION

11 BY MR. CARROLL:

12 Q This is Exhibit 467, pre-marked,
13 and I believe --

14 JUDGE SIPPEL: Thank you. Do you
15 disagree that this is already in evidence,
16 467?

17 MR. PHILLIPS: I think everything
18 is marked, so -- I get lost in all the
19 numbers, but I think --

20 JUDGE SIPPEL: All right. That
21 wasn't a test.

22 BY MR. CARROLL:

1 Q Mr. Solomon, I've handed you
2 Comcast Exhibit 467. Do you recognize this as
3 the cost analysis The Tennis Channel did
4 relating to the offer that you made to Mr.
5 Bond in May of 2009?

6 A I don't recognize the document,
7 but it's -- presumably it's a cost analysis.

8 Q Sir, this came out of your file.
9 Do you have any reason to dispute that this is
10 The Tennis Channel's cost analysis?

11 A I don't recognize it. I don't
12 have any reason to dispute it.

13 Q Is that your handwriting at the
14 top of these two pages, D1 and D0?

15 A It doesn't appear to be.

16 Q It was produced, again, from your
17 side out of your file. Am I correct that you
18 knew going into the May 2009 meeting with Mr.
19 Bond that the offer you were going to make him
20 was going to cost him more, correct?

21 A Yes.

22 Q And, in fact, you did a

1 computation yourself of just how much that
2 would be under your -- each branch of your
3 offer, your D1 and your D0 offer, right?

4 A That's what this appears to be.

5 Q Okay. Well, you are the guy in
6 charge of this. I assume that you were
7 familiar with this at the time, weren't you?

8 A Well, I'm not sure that I was
9 familiar with this document. A lot of
10 documents are always prepared related to these
11 things.

12 Q Were you interested in knowing how
13 much more this was going to cost my client,
14 the offer you were making to my client?

15 A Sure.

16 Q Okay. Do you have a number in
17 mind for how many over the years your
18 offer was going to cost my client?

19 MR. PHILLIPS: On a per year
20 basis?

21 MR. CARROLL: Either way, you've
22 got it.

1 BY MR. CARROLL:

2 Q Now, you're reading the document.
3 I don't want you just to read it back. I'm
4 going to give it to you. But do you remember
5 what that number was?

6 A I have no reason to dispute, as
7 you said, these. I'll accept for the moment
8 -- I'm not doing the math -- that they are in
9 the range of what we're talking about.

10 Q It was an awful lot of money,
11 wasn't it?

12 A Well, it depends how you look at
13 it. It's not an awful lot of money compared
14 to what they are paying themselves.

15 Q You knew this was going to be a
16 big problem, which is why your team analyzed
17 what the costs were, right?

18 A Not necessarily. In fact, we
19 thought that this -- you know, in our business
20 this is a very reasonable price for the kind
21 of rights and the kind of product that we were
22 offering.

1 Q You don't remember even after this
2 telling your colleagues at The Tennis Channel
3 that you knew -- this was with respect to
4 another cable company -- that if they have it
5 on the sports tier, they would much rather
6 carry it there, because of the cost. You
7 don't remember discussing that with people?

8 A Well, that's a different question.
9 I may have had that discussion with people.

10 Q You may have. Let me just, Your
11 Honor, so we can bring in the rest of the
12 group -- I guess it's only one person, though.

13 JUDGE SIPPEL: The group of one.

14 BY MR. CARROLL:

15 Q Let me just clarify what the terms
16 are. First of all, D1, the number at the top
17 of the first page in circles, that refers to
18 a carriage level, right?

19 A Correct.

20 Q What did you understand D1 was
21 when you were offering it to my client?

22 A About half of their subscribers, a

1 little less.

2 Q That's what you described as the
3 mid-level distribution.

4 A Yes.

5 Q Now, interesting, you offered this
6 to my client as one of the options in this May
7 offer, didn't you?

8 A We did.

9 Q But you're here and you're suing
10 for a whole lot more. You're not interested
11 in D1 any more, are you? Yes or no.

12 A We're interested in equal
13 treatment.

14 Q Are you suing and asking in this
15 courtroom for D1 carriage today? Yes or no.

16 A No, we're asking for equal
17 treatment. If Golf Channel and Versus were on
18 D1, then I guess the answer would be yes. I
19 just want to be clear in my answer.

20 Q Golf and Versus are now, as you
21 understand it, carried where, D0?

22 A Actually, I believe a deeper

1 penetration level than that.

2 Q Deeper penetration.

3 A Yes.

4 Q You are suing here for greater
5 distribution than the D1 distribution you
6 proposed in May of 2009, correct?

7 A As it stands today, yes.

8 Q Yes. And the D1 proposal you made
9 for the so-called mid-level distribution --
10 and mid-level in your mind would mean
11 penetration around 50 percent?

12 A Yes.

13 Q Is that what you mean? Okay.
14 Around 50 percent.

15 A A little less.

16 Q Your Honor, that's measured --
17 again, you can confirm this, sir, as a
18 percentage of all the subscribers, about 50
19 percent of them. That's what you mean, sir,
20 right?

21 A Yes.

22 Q Okay. And you figured out at the

1 bottom of this page what the fee difference
2 would be to Comcast -- three lines from the
3 bottom there is a line that says under
4 Variance, Comcast fee difference, do you see
5 that?

6 A Yes.

7 Q Okay. the
8 first year, the next
9 year, the next year, in 2012. So just
10 for those years, it is almost more
11 expensive, correct?

12 A Yes.

13 Q Now, your contract with Comcast
14 doesn't end in 2012, does it?

15 A No.

16 Q When does it end?

17 A Far into the future, because they
18 have many options on us.

19 Q What is the next renewal date,
20 sir?

21 A I think it's or something
22 like that.

1 Q Okay. So out?

2 A Call it that.

3 Q All right. So we have to add
4 more columns of this to get what the
5 Comcast fee difference would be over this
6 contract, correct?

7 A For the cost side of the equation,
8 yes.

9 Q Yes, sir, for the cost side of the
10 equation. So no difficulty admitting that is
11 going to be easily over .

12 A Well, actually, I'm not sure. At
13 plus, you know, if you multiply that out,
14 I'm not sure that's over more.

15 Q Many .

16 A Over 10 years?

17 Q Is that a yes?

18 A Again, I would have to do the
19 math. I'm not sure that it is many
20 , but more than .

21 Q Well, let's see. We've got
22 in four years. I don't want to

1 belabor this point. If we double it, we're
2 into .

3 A Okay.

4 Q Wouldn't you consider that to be
5 many ? ?

6 A Yes.

7 Q The next page is the D0
8 alternative you offered. That is digital
9 basic, the most penetrated level, is that
10 right?

11 A I guess there is one more
12 penetrated level than this, so this isn't the
13 most penetrated level.

14 Q I said the most penetrated digital
15 level.

16 A Oh, I'm sorry.

17 Q Not basic.

18 A I didn't understand.

19 Q Do you agree with that?

20 A It's my understanding --

21 Q Okay.

22 A -- it's the most penetrated.

1 Q This one means that you would get
2 penetration levels about what percent, do you
3 know?

4 A I think it's in the 85 percent
5 range.

6 Q Which is about what you are asking
7 for in this case, as things currently stand,
8 is that right?

9 A I think a little more the way it
10 stands today, but you could tell me.

11 Q Right. And the Comcast fee
12 difference that you have calculated on this
13 page -- we won't belabor the point -- three
14 lines from the bottom -- again, Your Honor,
15 for this variety over the four years through
16 2012 is , is that correct?

17 A Yes.

18 Q Okay. And, again, this contract
19 will run out until , at a minimum, so
20 at least double that amount, maybe a lot more,
21 over the life of the contract, agreed?

22 A Okay.

1 Q Well, you sound cavalier about
2 this. Is that agreed?

3 A I simply -- I'll say yes.

4 Q Okay. And you knew in your mind
5 when you approached Mr. Bond that this was
6 going to be the big issue, how much this was
7 going to cost him, right?

8 A Well, I think cost is always an
9 issue. I think that we looked at this from
10 the perspective of the way they run their
11 multi-billion dollar business, and looked at
12 the -- what we were offering, and this as a
13 very, very reasonable deal. We thought they
14 would be excited by it.

15 MR. CARROLL: Your Honor, now I
16 think I can stay off of the numbers as I
17 proceed here forward. So should we summon
18 whoever is out there, or indicate that it's
19 open?

20 JUDGE SIPPEL: Well, I can just
21 open the door, and if he's in the corridor, he
22 can come in. (End Closed Session.)

CROSS EXAMINATION

BY MR. CARROLL:

Q Now, let me show you our next exhibit, if I may.

Your Honor, may I approach?

JUDGE SIPPEL: You surely may.

MR. CARROLL: Thank you.

THE WITNESS: Should I keep this one or do something else with it?

MR. CARROLL: You can put it in that pile.

This will be Exhibit 121, again, Your Honor, already marked.

JUDGE SIPPEL: Thank you.

BY MR. CARROLL:

Q Mr. Solomon, we have placed before you what has been marked as Comcast Exhibit 121. Do you recognize this, sir?

A It looks familiar.

Q This was also produced from your file. Does this have your handwriting on it?

A It appears to.

1 Q Okay. Now, a moment ago I asked
2 you that question, and now I am going to get
3 -- tie up some loose ends here. I asked you
4 that question about, didn't you understand
5 generally that cost was a big concern in your
6 negotiations with any capable company. Do you
7 remember that?

8 A Yes.

9 Q Okay. If you'll turn to page 5126
10 in the exhibit --

11 JUDGE SIPPEL: Now, the cost that
12 you referred to in that question -- and this
13 is for my edification -- is the cost that it
14 would be to Comcast, is that right? Is that
15 what he's concerned about?

16 MR. CARROLL: Correct. Yes, and
17 let me take that in pieces. In fact, that is
18 one of the issues to clean up, so let me do
19 that now, Your Honor.

20 BY MR. CARROLL:

21 Q The way this works, sir -- can you
22 confirm for His Honor -- is that a programmer

1 such as yourself will charge a cable company
2 such as Comcast a certain amount per
3 subscriber, correct?

4 A That is correct.

5 Q And then, that price per
6 subscriber is per subscriber per month.

7 A Correct.

8 Q So you multiply it by 12, and you
9 would have the per subscriber per year charge,
10 correct?

11 A Yes.

12 Q His Honor asked a question at one
13 point about the sports tier, and you were
14 commenting on the price that Comcast might
15 charge, say, \$5 to its viewer, to its
16 customers for the sports tier, but you weren't
17 meaning to indicate that all the viewer would
18 get would be your programming under that
19 scenario, right?

20 A No, I had mentioned that there
21 would be other networks like a soccer channel
22 or something.

1 Q Well, do you know what else is on
2 the sports tier?

3 A No. There are a number of other
4 networks there.

5 Q Well, what are they?

6 A I'm not -- they are not networks
7 that I regularly watch, so I can't tell you.

8 Q Well, that's where The Tennis
9 Channel is. You're not even familiar with
10 what company you are keeping on the sports
11 tier?

12 A We have seen them in the past, and
13 we have reviewed the list. They don't appear
14 to be regularly viewed networks, and they are
15 not networks that are necessarily directly in
16 our competitive set. And I'm not a Comcast
17 subscriber at home.

18 Q But have you other bothered to
19 check up -- it is just interesting to me --
20 you are the CEO -- have you ever bothered to
21 check what is on the sports tier in addition
22 to Tennis Channel?

1 A Sure.

2 Q And what do you remember being
3 there other than soccer?

4 A I can't remember at this time. We
5 have a lot of clients, a lot of customers,
6 with a lot of different packages, and we keep
7 track of all of them. Before I go into a
8 meeting, of course, I take a look to find out
9 what we're talking about specifically. If I
10 recall correctly, what is -- what I remember
11 is what's not there. And what's not there was
12 anything --

13 Q But I asked you what's there, sir.

14 MR. PHILLIPS: Excuse me.

15 MR. CARROLL: That was my
16 question, Your Honor, what is there?

17 THE WITNESS: I have told you, I
18 know there is at least --

19 MR. PHILLIPS: I was just going to
20 object because I thought Mr. Solomon hadn't
21 finished his answer, Your Honor. I'm sorry.

22 JUDGE SIPPEL: You're okay. We're

1 okay. That's okay. The objection is
2 overruled.

3 BY MR. CARROLL:

4 Q Do you know whether ESPNU is on
5 there? The university channel for -- the
6 college channel for ESPN?

7 A I think it may be.

8 Q You're not sure.

9 A I'm not sure.

10 Q How about Red Zone, is that there?

11 A I think it is.

12 Q But you're not sure of that
13 either.

14 A I think it is there.

15 Q You are more sure of that.

16 A Well, you are looking at the
17 paper, I'm not, so I trust your judgment.

18 Q Well, sir, I'm just surprised.
19 I'm going to ask you again, do you know --
20 other than soccer, can you name any of the
21 other channels that are on the sports tier
22 with you?

1 A Not at this time.

2 Q You're not disputing that it
3 includes channels, because you don't know I
4 guess -- Red Zone and Big Ten -- the Big Ten
5 has a network. Are you familiar with that?
6 Do you know if that is on the sports tier?

7 A I believe it is.

8 Q And am I correct -- just confirm
9 for His Honor -- that what Comcast charges for
10 -- its \$5 -- is for the collection of channels
11 on the sports tier, including yourself and all
12 of these other channels, correct?

13 A I believe that's what I was
14 saying, and I believe that's correct.

15 Q All right. I'm glad we've
16 clarified that.

17 Now, do you have Exhibit 121 still
18 in front of you?

19 Your Honor, I'm going to go back
20 to that, if it's okay, now.

21 A I do.

22 JUDGE SIPPEL: Where are we now

1 again?

2 MR. CARROLL: Back to Exhibit 121.

3 JUDGE SIPPEL: I'm with you.

4 MR. CARROLL: Okay, great.

5 BY MR. CARROLL:

6 Q And I think I'm on the second
7 page, 126. I wanted to -- there is no numbers
8 in this language, so I assume there won't be
9 any objection to this. There is a paragraph
10 at the bottom. First, this is a document in
11 which you were talking amongst yourselves at
12 Tennis Channel in October 2010, and you are
13 looking forward to the year 2011, is that
14 right?

15 A Yes.

16 Q Okay. And you have an observation
17 at the bottom I want to focus on. It says,
18 "We are pursuing repositionings of Tennis
19 Channel off of sports tiers when we do not
20 have the leverage of an expiring deal." Now,
21 "leverage of an expiring deal," that means
22 that -- the leverage you are referring to is

1 that if a deal is expiring, you can threaten
2 the cable company that you just won't let them
3 air the programming anymore, right?

4 A Not necessarily.

5 Q Well, what do you mean "not
6 necessarily"? Isn't that what "leverage of an
7 expiring deal" in fact means? The leverage,
8 when a deal expires, is that if the cable
9 company doesn't agree to your terms, you can
10 tell them, "You can't have the programming
11 anymore."

12 A Well, first of all, you have said
13 two different things. You said "threaten,"
14 and we're not in the business of threatening
15 as a rule. But you could also put the word
16 "renegotiate" in there.

17 Q Does the leverage come from the
18 prospect? Let's try that word.

19 A Well, I didn't --

20 Q Did you communicate to the cable
21 company that if they don't agree to the terms
22 you want you won't let them have the

1 programming?

2 A I think that our distribution
3 executives, probably one of them who wrote
4 this, sees an expiring contract as an
5 opportunity to have a discussion about
6 renewal.

7 Q Am I correct that --

8 JUDGE SIPPEL: Well, I'm sorry.
9 If it's an opportunity, why does he use the
10 word "leverage"?

11 THE WITNESS: I'm not sure. But
12 it certainly -- since we don't get much of it
13 as a small, independent company, if he looks
14 at this as leverage -- maybe leverage to get
15 -- just to get a meeting, which is often very
16 hard for him to get. We just are -- you know,
17 in many ways are the little guy, and a lot of
18 times you can't get these folks on the phone.
19 So one man's leverage might be different to
20 another.

21 BY MR. CARROLL:

22 Q Well, you tell me if you don't

1 understand this language, but this is, again,
2 from your file. It says, "We are pursuing
3 repositionings of Tennis Channel off of sports
4 tiers when we do not have the leverage of an
5 expiring deal." Do you see that the two ideas
6 being linked are "repositioning off of a
7 sports tier" and "leverage from an expiring
8 deal"? Do you see that?

9 A What I see is he is saying that we
10 are doing -- he is talking about doing it when
11 he doesn't have that. So he is saying if
12 there were leverage, but I don't have it.

13 Q Exactly. And he doesn't have it,
14 in this instance with Time Warner, because
15 they have a deal that lets them keep the
16 channel on a sports tier, correct?

17 A Yes.

18 Q And what you write that about that
19 scenario -- and that's very similar to
20 Comcast, isn't it?

21 A Well, it's similar to Comcast in
22 that we have a longer term deal, and right now

1 we don't have an expiring deal. But I didn't
2 write it.

3 Q And the deal that you have with
4 Comcast is similar to Time Warner in that it
5 permits us to put you on a sports tier,
6 correct?

7 A Yes.

8 Q And what he writes here is, "We
9 had some extensive conversations with Time
10 Warner about that sort of thing this year.
11 The short answer is that it is not easy." And
12 this is the sentence I want to focus on. "If
13 they can carry Tennis Channel in the sports
14 tier, they would much rather do that than
15 carry it in a digital basic tier."

16 Now, the "they" that is being
17 referred to here is Time Warner, correct?

18 A Yes.

19 Q And what he is saying is that Time
20 Warner, this other cable company, would much
21 rather have us on a sports tier than have to
22 give us broader distribution on one of those

1 D tiers, D0 or D1, correct?

2 A Apparently, that is what they told
3 him.

4 Q Okay. And you didn't think that
5 was discrimination when Time Warner told you
6 that, did you? Yes or no.

7 A Well, first of all, they didn't
8 tell me that. They told him that. And second
9 of all --

10 JUDGE SIPPEL: Wait a minute. Who
11 "him"?

12 THE WITNESS: Whoever wrote this.
13 Presumably one of our distribution executives,
14 both of whom happened to be male, which is why
15 I say "he," but -- I'm sorry, your question
16 was?

17 BY MR. CARROLL:

18 Q You did not consider this when you
19 read this and discussed it with your
20 colleagues --

21 A Yes.

22 Q -- you didn't say, "This is

1 discrimination by Time Warner, correct?

2 A Well, Time Warner, to my
3 knowledge, doesn't have networks that compete
4 directly against us that have broader
5 distribution than we do.

6 Q Exactly.

7 JUDGE SIPPEL: Can you answer his
8 question? He is looking for a yes or no
9 answer.

10 BY MR. CARROLL:

11 Q Did you consider this
12 discrimination? Yes or no.

13 A No.

14 Q Now, I want to go back to the
15 meeting with Mr. Bond. And I want to make
16 sure your testimony isn't changing -- and
17 maybe I just misheard it, sir -- from the
18 direct written testimony you submitted. Do
19 you have your direct testimony in front of you
20 that -- the written version?

21 A I do.

22 Q Okay.